

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

SPORTS SHINKO CO., LTD., a Japan
corporation,

Plaintiff,

vs.

QK HOTEL, LLC, a Hawaii limited
liability company, et al.,

Defendants,

and

FRANKLIN K. MUKAI, et al.,

Third-Party Plaintiffs,

vs.

SPORTS SHINKO (USA) CO., LTD.,
a Delaware Corporation, et al.,

Third-Party Defendants.

CV 04-00124 BMK

CV 04-00127 BMK

DECLARATION OF
MICHAEL A. COHAN;
EXHIBITS C-1 – C-5

SPORTS SHINKO CO., LTD., a
Japan corporation,

Plaintiff,

vs.

OR HOTEL, LLC, a Hawaii limited
liability company, et al.,

Defendants,

and

FRANKLIN K. MUKAI, et al.,

Third-Party Plaintiffs,

vs.

SPORTS SHINKO (USA) CO., LTD.,
a Delaware Corporation, et al.,

Third-Party Defendants.

CV 04-00127 BMK

DECLARATION OF MICHAEL A. COHAN

Pursuant to 28 U.S.C. § 1746, MICHAEL A. COHAN states as follows:

1. I am a certified public accountant, licensed to practice in the State of California. I have been qualified as an expert on accounting and auditing in California Superior Court and United States Bankruptcy Court. My current *curriculum vitae* is attached as Exhibit C-1 hereto.

2. I have formed the opinions and conclusions as stated below from my review of the accounting records and other documents identified in ¶ 4. The opinions and conclusions I have drawn are based on my expertise in accounting. As to the statements made based upon information and belief, I believe them to be true. If called as a witness, I could and would competently testify to the matters stated herein.

3. As set forth in detail below, according to the Sports Shinko (USA) Co., Ltd. and subsidiaries (“SS-USA and Subs”) accounting records produced by Sports Shinko Co., Ltd. (“SS-Japan”), for the period beginning February 27, 2004 and ending April 30, 2007, there were no debts carried on the books of Sports Shinko (Waikiki) Corporation (“SS-Waikiki”) owing to SS-Japan, South Wind Realty Finance (Cayman) Company (“South Wind”), South Wind TK (“SWTK”), or anyone else.

4. In forming the opinions set forth herein, I considered:

A. An electronic data file named “GL_SSUSA and Sub_Jan04_April07.xls” (“SS-USA GL FILE”) contained on a compact disc

marked 260 1476.¹ This electronic data file contains journal entry transaction data of SS-USA and Subs for the period beginning January 31, 2004 and ending April 30, 2007. All amounts in the SS-USA GL FILE are denominated in Japanese yen (“JPY”).

B. Journal Entries for SS-USA and Subs marked 266 0001 to 266 1877 (“SS-USA JE DOCS”). SS-USA JE DOCS are journal entry forms and related supporting documents from four binders. Each binder label is marked “GSRJL”² and includes a brief description of the binder contents. SS-USA JE DOCS provide accounting detail for relevant entries in SS-USA GL FILE. Specifically, SS-USA JE DOCS includes a journal entry form prepared and approved by GSRJL employees, documents supporting each line item on the journal entry form and a “posting journal”. Each journal entry form in the SS-USA JE DOCS includes a unique transaction number (“GLDOC”). That number is cross-referenced in the related posting journal (in the column “DOCUMENT”) and in the SS-USA GL FILE (in the “GLDOC” column). All amounts in the posting journal are denominated in both United States dollars (“USD”) and JPY.

¹ Part of KG Ex. 17. SS-USA GL FILE and SS-USA JE DOCS (as defined in ¶ 4B) were provided by SS-Japan in the litigation pursuant to the Stipulated Order Granting KG Parties’ Second Motion to Compel Discovery and to Set Scheduling Conference, filed June 18, 2007.

² “GSRJL” is Goldman Sachs Realty Japan Ltd., a wholly-owned subsidiary of The Goldman Sachs Group, Inc., and an operating entity of Archon Group, L.P. (Source: <http://www.gsrjl.com/>.)

C. SS-USA and Subs and Sports Shinko (Hawaii) Co., Ltd. and Subsidiaries (“SS-Hawaii and Subs”) 2003 compiled consolidated financial statements (numbered GT014221 – GT014229 and GT014259 – GT014270, respectively).

D. SS-USA and Subsidiaries 2004 consolidated federal, Hawaii and California income tax returns (numbered 256 1546 – 256 1674, GT038419 – GT038442 and GT038267 – GT038347, respectively).

E. SS-USA and Subsidiaries 2005 and 2006 consolidated federal, Hawaii and California income tax returns (numbered GT036999 – GT037125 (federal 2005), 261 1143 – 261 1251 (federal 2006) GT037687 – GT037700 (Hawaii 2005), 261 1855 – 261 1872 (Hawaii 2006), GT037587 – GT037639 (California 2005), 261 1795 – 261 1854(California 2006)).

F. Grant Thornton work papers for the financial statements and the 2004 and 2005 income tax returns described in ¶¶ 4C, 4D and 4E.

G. “Plaintiff’s Memorandum In Opposition to the KG Parties Motion for Partial Summary Judgment, Filed May 10, 2007” filed August 24, 2007 (“SS MIO”) including the attachments and exhibits.

5. Upon information and belief, SS-USA GL FILE contains the entire general ledger of SS-USA and Subs covering the forty-month period ended April 30, 2007. The data file contains approximately 1,700 rows of journal entry line

items to the books of unconsolidated SS-USA (“USS-USA”)³ and its nine subsidiaries. Only 54 line items represent entries to long-term debt activity posted to three liability accounts (“LTD ACCOUNTS”). These three accounts⁴ are the only accounts GSRJL used to record intercompany debt and accrued interest activity among USS-USA and certain of its subsidiaries and SS-Japan. I prepared Exhibit C-3.1 by extracting all SS-USA GL FILE line item⁵ entries recorded to any of the LTD ACCOUNTS. Using the Exhibit C-3.1 data, I prepared Exhibit C-2.1 to reflect all LTD ACCOUNTS entries posted to the books of SS-Waikiki⁶.

6. Exhibits C-2 (other than C-2.1), C-3.2, C-4 and C-5 are comprised of true and correct copies of materials from SS-USA JE DOCS and Grant Thornton

³ Unconsolidated SS-USA refers to Sports Shinko (USA) Co., Inc. as a stand-alone company, not consolidated with its subsidiaries.

⁴ GSRJL used three accounts to record SS-USA and Subs’ long-term debt liabilities:

Account 20140 – INITIAL FUNDING-SR NP (“IF-SR”)

Account 20610 – INITIAL FUNDING-IC NP (“IF-IC”)

Account 21410 – ACCRUED INTEREST-IC NP (“AI-IC”)

⁵ Each SS-USA GL FILE line item in Exhibit C-3.1 is referenced to the original row number (“ORN”) in the data file produced by SS-Japan. See “ORN” column in Exhibits C-2.1 and C-3.1.

⁶ There were no SS-USA GL FILE IF-IC entries for Company 03585 (SS-Waikiki see Exhibit C-3.2) and only a total of eight SS-Waikiki entries to IF-SR and AI-IC (four to each account).

documents. I made certain highlights and annotations⁷ on these materials to (a) explain the information on the document and (b) reference other exhibit pages.

7. Exhibit C-2 proves that SS-Waikiki had no debt effective February 27, 2004 and continuing through April 30, 2007. This series of documents show that, GSRJL recorded a ¥ [REDACTED]⁸ liability on SS-Waikiki's books as of February 27, 2004 (See Ex. C-2.1 at ORN 70; C-2.2 to C-2.4), and then transferred the same amount from liabilities to retained earnings (an equity component) effective the same day (See Ex. C-2.1 at ORN 686; C-2.5 and C-2.6).⁹

⁷ My markup of the attached exhibits are shown in color or in color boxes. Any markings or hand-written notes on SS-USA JE DOCS or "GT" documents in the attached exhibits are as these documents were produced by GSRJL/SS-Japan.

⁸ The USD equivalent of this JPY denominated amount is \$ [REDACTED] as shown at Exhibit C-2.2 and C-2.4. This USD amount (the "USD DEBT") is the long-term debt amount reported in SS-Waikiki's 12/31/2003 balance sheet (Exhibit C-2.3) which is part of the compiled 2003 SS-Hawaii and Subs consolidated financial statements.

⁹ The initial entry (C-2.1 ORN 70 - GLDOC 148725) recording SS-Waikiki's [REDACTED] (Exhibit C-2.4) was posted August 12, 2004 and effective on February 27, 2004. The transfer to equity (See Exhibit C-2.1 at ORN 686 GLDOC 167023) described as "[REDACTED]" was posted on December 16, 2004 and effective on February 27, 2004. Exhibit C-2.2 to C-2.4 show that GSRJL's first entry (GLDOC 148725) was prepared to record SS-Waikiki balances at 12/31/2003 as reported in the compiled consolidated financial statements of SS-USA and Subs. Exhibits C-2.5 and C-2.6 show that GSRJL's final entry (GLDOC 167023) was prepared to transfer SS-Waikiki balance sheet accounts to retained earnings.

8. The absence of debt on SS-Waikiki's books is consistent with:

A. HungKe Lee's statement that "the loans on the books of ... SSW ... were reduced to zero ..." ¹⁰;

B. The statement of tax free transfer filed with SS-USA's 2004 federal income tax return (KG Ex. 3 at 256 1599);

C. 2004 Form 5472 filed by SS-USA reporting to the Internal Revenue Service that at December 31, 2004 SS-USA and Subs had [REDACTED] [REDACTED] (KG Ex. 3 at 256 1596-97);

D. 2005 Form 5472 filed by SS-USA reporting to the Internal Revenue Service that at the beginning of 2005 SS-USA and Subs had [REDACTED] [REDACTED] (KG Ex. 11A at GT037051-052/SS Ex. 68 at GT037051-52);

E. Statements filed with SS-USA and SS-Hawaii's 2004, 2005 and 2006 federal and Hawaii income tax returns asserting that "the value ¹¹ of Sports Shinko (USA) Co., Ltd. stock" was [REDACTED] ¹² prior to SWTK's indirect

¹⁰ Declaration of HungKe Lee ¶6.

¹¹ The "value of stock" is determined by reducing the fair market value of the assets of an entity by its liabilities.

¹² Documents prepared in support of SS-USA's 2004 filings establish that the "[REDACTED] [REDACTED]" KG Ex. 14 at GT038373. Thus, the February 2004 value calculation is \$9,000,000 in assets minus \$-0- in liabilities.

acquisition of SS-USA on February 24, 2004. (KG Exs. 3 at 256 1598 (federal 2004), 10A at GT038440 (Hawaii 2004); 11A at GT037053 (federal 2005); 11B at GT037697 (Hawaii 2005); 12A at 261 1191 (federal 2006); and 12B at 261 1869 (Hawaii 2006);

F. SS-Waikiki's December 31, 2004 balance sheet and trial balance (KG Ex.6)¹³ prepared by GSRJL as an Excel file and provided to Grant Thornton in July or August 2005.

9. Exhibit C-4, a compilation of SS-Waikiki balance sheets contained in SS-USA JE DOCS, corroborates the preceding interpretation of SS-Waikiki's books and records. These GSRJL accounting system documents show SS-Waikiki's books reflected:

A. [REDACTED] for "TOTAL NOTES PAYABLE" and "TOTAL LIABILITIES" at November 30, 2004. See Exs. C-4.1 and C-4.2.

B. [REDACTED] for "TOTAL NOTES PAYABLE" and "TOTAL LIABILITIES" at November 30, 2004. Ex. C-4.3.¹⁴

¹³ KG Ex. 6 is the first of two sets of SS-Waikiki 12/31/2004 balance sheets and trial balances generated by GSRJL. All amounts on this "1st set" are in agreement with the GSRJL maintained books and records of SS-Waikiki. SS Ex. 66, the "2nd set", amounts **are not** in agreement with the SS-Waikiki books and records. Both sets of documents represent financial reports supposedly prepared for books and records. The documents themselves do not constitute "books and records".

10. Upon information and belief, the accounting records of SS-USA and Subs, including SS-Waikiki, are maintained by GSJRL. I base this observation upon the following:

A. H. Vixaysack's August 18, 2006 memorandum to SS-USA and Subs file stating "[REDACTED]

[REDACTED]

[REDACTED]" KG Ex. C-5.1 (GT037508).

B. Hitoshi Okuzumi (e-mail address Hitoshi.Okuzumi@gsrjl.com) March 6, 2006 e-mail message to H. Vixaysack re "Engagement Letter for Sports Shinko USA" noting "[REDACTED]

[REDACTED]. KG Ex.

C-5.2 (GT037500).

C. June 22, 2005 e-mail exchange between Chieko Ono (e-mail address Chieko.Ono@gsrjl.com) and Steve Iwamura re SS-USA and Subs accounting matters. KG Ex. C-5.3 (266 1177).

D. USS-USA journal entry form re GLDOC 197037 was prepared and posted by C. Ono and approved by Hitoshi Okuzumi. KG Ex. C-5.4 (266 1127).

¹⁴ Even though there is a hole punched through the year on Exs. C-4.1 and C-4.3, the year is shown to be 2004 by the journal entry form and "posting journal" (both dated 12/16/04) in this document package.

11. There are differences between U.S. Generally Accepted Accounting Principles ("US-GAAP") and the accounting standards applied in other countries, including Japan. As shown in the page title of the SS-Waikiki balance sheets in Exhibit C-4, GSRJL maintains the books of SS-Waikiki using US-GAAP. For example, see Ex. C-4.1 at 266 0698 statement "(US GAAP [] USD – 11/30 YE)". Upon information and belief, GSRJL also maintains the books of SS-Japan¹⁵. SS-Japan's financial and tax reports are prepared following Japanese accounting standards and tax regulations which differ from US GAAP and U.S. tax laws and regulations. As a result, it is feasible that SS-Japan's accounting for items such as intercompany debt would differ for SS-Waikiki's accounting for the same item.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED: Pleasanton, California, October 19, 2007.


MICHAEL A. COHAN

¹⁵ The compact disc containing SS-USA GL FILE (part of KG Ex. 17) contained 49 files listing SS-Japan's general ledger journal entries from February 2004 to October 31, 2006. The format and column headings for each of these files were identical to that of SS-USA GL FILE.